IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 8TH AUGUST 2007 / 17TH SRAVANA 1929

Bail Appl..No. 4781 of 2007()

CRIME NO. 503/07 OF KASARGODE POLICE STATION

PETITIONER/16TH ACCUSED

K.CHANDRAN NAIR, S/O KELU NAIR,
KANHANGAD SOUTH P.O., KASARGODE DISTRICT.

BY ADV. SRI.JAWAHAR JOSE

RESPONDENTS: COMPLAINANT AND STATE

THE STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 08/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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B.A.No. 4781 of 2007

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Dated this the 8th day of August, 2007

O R D E R

Application for anticipatory bail. The petitioner is the 16th named accused. Many other unnamed persons are shown as accused in the F.I.R. The crime is registered, inter alia, under Sections 353 and 332 r/w. 149 I.P.C. and Section 3(1) of the P.D.P.P. Act. The crux of the allegations is that the accused persons were members of an unlawful assembly of persons who resorted to wanton acts of violence and destruction of public property by throwing stones at a Government building and the police party. The police officials were deterred. Hurt was caused to them. Damage was caused to the public property. The alleged incident took place on 23.7.2007. Accused 1 to 12 were arrested at the spot. The petitioner could not be arrested. Investigation is in progress. The petitioner apprehends imminent arrest.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. No overt act is alleged against him. There is only an omni bus statement that the petitioner was also one

of the miscreants. The injury suffered was not serious. The alleged damage suffered to the building is also not serious. The petitioner is an acute diabetic patient and is advised to take rest by the Physician treating him, submits the counsel. Annex.A certificate is produced to support that contention. In these circumstances anticipatory bail may be granted to the petitioners, it is prayed.

3. The application is opposed by the learned Prosecutor. He submits that the allegations are serious. Damage to public property was caused in a wanton act of violence. Stone throwing was resorted to against the police officials also. A serious view may be taken, submits the learned Prosecutor. The petitioners may be directed to surrender before the Investigating Officer or the learned Magistrate having jurisdiction and then seek regular bail in the ordinary course.

4. I find merit in the opposition raised by the learned Prosecutor. I am of the opinion that this is a fit case where the petitioner must resort to the ordinary and normal procedure of appearing before the Investigator or the learned Magistrate having jurisdiction and then seek regular bail in the ordinary course. I find no features in this case to invoke the extra ordinary equitable discretion under Section 438 Cr.P.C. in favour of the petitioner.

6. This application is accordingly dismissed. I may however hasten to observe that if the petitioner appears before the Investigating Officer or the learned Magistrate having jurisdiction and then seek bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously in the light of all the circumstances, including the assertion that the petitioner is sick.

(R. BASANT)
Judge

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